

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

MARK ANTHONY GARCIA,)	
)	
Plaintiff,)	
)	
-vs-)	Case No. CIV-11-558-F
)	
JOHN WHETSEL, et al.,)	
)	
Defendants.)	

ORDER

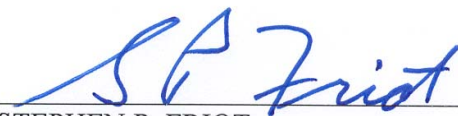
On January 27, 2012, United States Magistrate Judge Doyle W. Argo issued a Report and Recommendation, wherein he recommended that the Motion to Dismiss of Defendant Don Evans be granted and the action be dismissed with prejudice as to Don Evans. Magistrate Judge Argo found that Don Evans is neither the proper nor intended party in this lawsuit. After reviewing the amended complaint, Magistrate Judge Argo found that the intended defendant is Dan Evans. Thus, Magistrate Judge Argo further recommended that plaintiff be required to submit a corrected request for issuance of summons and summons listing Dan Evans as the proper defendant within ten days of any order adopting the Report and Recommendation.

In the Report and Recommendation, Magistrate Judge Argo advised plaintiff of his right to file an objection to the recommended ruling by February 16, 2012 and that failure to make timely objection waives the right to appellate review of both factual and legal questions therein contained. To date, plaintiff has neither objected to the Report and Recommendation nor sought an extension of time to file an objection. With no objection being filed within the time prescribed, the court accepts, adopts and affirms the Report and Recommendation in its entirety.

Accordingly, the Report and Recommendation issued by United States Magistrate Judge Doyle W. Argo on January 27, 2012 (doc. no. 20) is **ACCEPTED**, **ADOPTED**, and **AFFIRMED**. The Motion to Dismiss of Defendant Don Evans (doc. no. 15) is **GRANTED**, and Don Evans is **DISMISSED WITH PREJUDICE**. The United States Marshal shall make no further attempts to serve Don Evans.

Plaintiff is **DIRECTED** to submit a corrected request for issuance of summons and the summons listing Dan Evans as the proper defendant **within ten days** of the date of this order.

DATED March 1, 2012.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

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